

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4522 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PARUBEN @ SHARMILABEN W/O AMARJI MOHANJI THAKOR

Versus

SILVIYA FILOMENA

Appearance:

MR HIMANSU M PADHYA for Petitioner

MR Y.S. SONI for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 17/09/97

ORAL JUDGEMENT

1. Admit. This FA is preferred by the original defendant-Smt.Paruben @ Sharmilaben against the judgment and decree passed by the 4th Jt.Civil Judge (SD) Palanpur dated 9.10.96 whereby the suit of the respondent-plaintiff is allowed and it is directed that the appellant-defendant shall handover the peaceful and vacant possession of the property shown in the map at

Mark "C" and further injuncted the appellant-defendant from inducting anyone else into the possession of the premises and also restrained her from transferring in any manner the suit premises or from making any construction thereon. Being aggrieved by the aforesaid judgment and decree the appellant-defendant has preferred this FA. In the trial court the suit of the plaintiff was resisted by the appellant-defendant by filing written statement at Exh.56. She denied the suit of the plaintiff when she pleaded various rights in her and based on the pleadings the trial court framed issues. Issue No.1 related to the fact as to whether the plaintiff proved that her husband George Roxbero having died on 25.4.90 and she being old aged and infirm in health, the defendant has started to reside in the house marked as "C" in the map of the property annexed to the plaint. The said issue is answered in favour of plaintiff by the trial court. Second issue was as to whether the plaintiff proved that the property shown in para 1 of the plaint have come in her possession and she has become the owner of the suit property after demise of her husband and that the said issue is also answered in favour of plaintiff. The other two issues as to whether the plaintiff proved that the defendant has no legal right over the suit property and that the plaintiff was entitled to peaceful and vacant possession of the suit property were also answered in favour of plaintiff.

2. Mr.J.J.Yagnik, Ld.counsel appearing for the appellant-defendant has submitted that the appellant is a very old aged woman and she does not claim any permanent right in the suit property excepting the right to reside in the property at Mark "C" as shown in the property attached to the plaint. He also submitted that the appellant-defendant alone will reside in the suit premises without inducting anyone else into possession of the premises and after her death the respondent-plaintiff will be entitled to get the peaceful and vacant possession of portion mark "C" in the map annexed to the plaint. He also submitted that heirs or legal representatives of the appellant or any other person residing with her in the suit premises will not be entitled to any right in the property at Mark "C" shown in the map and on her death peaceful and vacant possession of the suit premises will be handed over to the respondent-plaintiff. Mr.Yagnik also submitted that the appellant shall file undertaking in this court to the aforesaid extent within four weeks from today and shall supply copy thereof to the advocate for the respondent-plaintiff failing which it would be open to the respondent-plaintiff to execute the decree.

3. In view of the aforesaid the appellant-defendant is permitted to live in the property at MARK "C" in the map during her life time on her filing undertaking to the aforesaid effect in this court within four weeks from today and if the undertaking is filed judgment and decree shall not be executed against the appellant during her life time.

4. In the result appeal partially succeeds to the aforesaid extent. No costs.

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